United Nations ST/IC/2009/42

Secretariat

1 December 2009

Information circular*

To: Members of the staff at Headquarters

From: The Assistant Secretary-General for Human Resources Management

Subject: **Employment of household employees for whom a G-5 visa has been requested or obtained**

1. The Secretary-General has received from the Permanent Mission of the United States of America to the United Nations a note verbale dated 23 October 2009, replacing its note verbale of 1 November 2004, in which it informs the Secretariat of the requirements concerning the employment of personal workers, attendants and other domestic workers employed by United Nations officials who are in the United States in non-immigrant G-5 visa status.

2. The text of the note verbale is set out in the annex to the present circular.

3. The present circular supersedes information circular ST/IC/2005/37 of 26 July 2005.

* The present circular will be in effect until further notice.

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Annex

Note verbale dated 23 October 2009 from the Permanent Mission of the United States of America to the United Nations addressed to the Secretary-General

The United States Mission to the United Nations presents its compliments to the United Nations Secretariat and has the honour to refer to the standards applicable to the employment of personal workers, attendants, and any other domestic workers employed by United Nations officials who are in the United States in non-immigrant G-5 visa status. The United States Mission wishes to emphasize the importance to the United States Government of providing fair treatment to domestic workers who come to the United States to work for members of the diplomatic community and to request that the United Nations Secretary-General take any and all measures necessary to ensure that the officials of the Organization employing such workers respect the laws relating to the treatment to be accorded domestic workers. This note supersedes previous notes on this subject.

New domestic worker visa eligibility requirements

The United States Mission wishes to inform the United Nations Secretariat of two new requirements it is implementing in connection with the employment of domestic workers by United Nations officials that pertain to the visa eligibility of prospective domestic workers. The United States Mission currently requires that it be notified at the time of the arrival in and departure from the United States of all domestic workers.

Effective November 15, 2009, the United States Mission will also require that it be provided with notification of any prospective domestic worker before the worker applies for a visa. This "pre-notification" requires that the Visa Committee of the United Nations Office of Human Resources Management submit a completed "Pre-Notification of a Domestic Worker" form ("Pre-Notification Form") addressed to UNDomesticWorkers@state.gov. The Pre-Notification Form, a sample of which is attached for reference, may also be found on the Host Country Affairs section of the United States Mission's website at www.usun.state.gov/about/host_aff/index.htm. The United States Mission must receive this notification prior to a domestic worker's submission of an application for a G-5 visa, as such visas will not be issued unless the Pre-Notification Form has been submitted. It should be noted that this pre-notification process does not, however, guarantee the issuance of a G-5 visa or change other non-immigrant visa eligibility requirements relating to such visas. Finally, the United States Mission wishes to advise that it accepts the submission of Pre-Notification Forms with the understanding that any such proposed employment by a United Nations official of a domestic worker has been reviewed and authorized by the Assistant Secretary General for Human Resources Management. It is also the understanding of the United States Mission that each review and authorization will have taken into consideration the financial support requirements described in the following paragraph.

In addition to requiring a Pre-Notification Form before a G-5 visa can be issued, the Department of State has determined that such visas will not be issued unless the United States consular officer responsible for reviewing the visa application reasonably concludes that the United Nations official will be able to

provide the required wages and working conditions, which are addressed below. To implement this policy, consular officers will now presume that any prospective employer of a domestic worker who does not carry the diplomatic rank of Minister or above, or in the case of the United Nations officials at the level of D-1 or above, will not be able to provide the legally required wages and working conditions. To overcome this presumption, a prospective employer without that rank would have to demonstrate to the consular officer reviewing the G-5 visa application that he or she has the financial ability to pay the salary of the domestic worker as specified in the contract, as well as related travel expenses. The consular officer will also take into consideration the number of domestic workers that a particular United Nations official may reasonably have the ability to employ. If a United Nations official seeks to replace a domestic worker or add to his/her existing domestic staff, the G-5 visa may be denied if the United States Mission or the Department of State has credible evidence that the official failed to fulfil his or her obligations to a former or current domestic worker, such as to abide by the contract terms generally, and specifically, to pay a fair wage.

Terms of employment of domestic workers by United Nations staff members

The United Nations Secretariat is reminded of the requirements placed on United Nations officials who employ domestic workers that they are required to have a written employment contract. The employment contract is necessary and required to assist both the employer and the domestic worker in establishing a good faith employment relationship in which each of the parties is expected to carry out the terms of the contract. The contract must be in English and, if the domestic worker does not understand English, in a language understood by the domestic worker. Two copies of the contract should be signed by both parties with one for the employer and one for the domestic worker. In addition, when a prospective domestic worker applies for a visa, the worker must provide a copy of the signed employment contract to the consular official.

The United States Mission is modifying the requirements to the terms of employment of domestic workers by members of the United Nations community, which must be included in employment contracts. Most notably, in the past, the United States Mission has required United Nations officials to retain records of the number of hours worked and of the payments made in connection with that work. As of November 15, 2009, the United States Mission will require that the payment of domestic workers be made by check or electronic funds transfer to a bank account in the domestic worker's name only. Payments in cash are no longer permissible. The United Nations Secretary-General is encouraged to implement internal policies to ensure that this obligation is adhered to such that, in the event of a dispute, the United Nations will have ready access to payment records.

An employment contract with a domestic worker should include the following:

- **Description of duties**. The contract must describe the work to be performed, e.g., housekeeping, gardening, child care, and must also include a statement that the domestic worker shall work only for the employer who signed the contract.
- **Hours of work**. The contract must state the normal working hours and number of hours per week. It is generally expected that a minimum of 35-40 hours per week of paid employment will be provided. It should also state that the

domestic worker will be provided a minimum of at least one full day off each week. The contract should also indicate whether the domestic worker will be provided paid holidays, sick days and vacation days.

- **Minimum wage**. The contract must state the hourly wage to be paid the domestic worker. The rate must be the greater of the minimum wage under federal and state law or the prevailing wage for all working hours, as determined by the Department of State. The contract should state that wages will be paid to the domestic worker either on a weekly or biweekly basis and state what deductions are to be taken from the wages. If any deduction is taken for meals or lodging, it must be no more than is reasonable.

- **Overtime work**. The contract must state that any hours worked in excess of the normal number of hours worked per week are considered overtime hours. It should also state that such work must be paid in accordance with the requirements of Local law.

- **Transportation to and from the United States**. The contract must state that the domestic worker will be provided with transportation to and from the United States.

- **Tax payments**. The employer shall ensure that all of his/her domestic workers having G-5 visa status have sufficient information regarding wages and other payments or withholdings made to any tax or other government authorities in order to enable such domestic workers to properly prepare and file any required tax or other forms required to be filed by such authorities. The employer shall ensure that any forms required to be filed by the employer to any such tax or other governmental authorities on behalf of such domestic workers have been timely and appropriately prepared and filed. Unless such domestic workers having G-5 visa status are from a country with which the United States of America has a totalization/social security agreement providing that such workers are not required to participate in the United States Social Security program, or unless the United Nations official is otherwise exempt, the employer shall pay the employer's portion of Social Security taxes and Medicare and any other required federal, state, or local taxes or contributions, including federal and state unemployment insurance and workers compensation insurance on all wages actually paid, which shall not be less than the applicable minimum or prevailing wage. Unless otherwise paid by the employer, the domestic worker shall pay the employee's portion of Social Security and all federal, state and local taxes in connection with his/her income.

- **Other required terms of employment**. The contract must state that the employer agrees to abide by all federal, state and local laws in the United States. The contract must also include a statement that the domestic worker's passport and visa will be in the sole possession of the domestic worker. In addition, the contract must state that a copy of the contract and other personal property of the domestic worker will not be withheld by the diplomatic or consular employer for any reason.

- **Other terms of employment**. The contract should include a statement that the domestic worker's presence in the employer's residence will not be required except during working hours. The contract may include other agreed-upon

terms of employment, if any, provided they are fully consistent with all United States federal, state and local laws. Any modification to the contract must be in writing.

To avoid possible misunderstanding, all United Nations officials employing domestic workers should maintain for the duration of actual employment plus three years, a copy of the contract and proof of wage payments, e.g., cancelled checks or electronic fund transfers (signed receipts for cash payments are not permissible); a record of daily and weekly hours worked, including any overtime; and a record of any deductions made.

Treatment of domestic workers: the role of the United Nations

The United States Mission looks to the Secretary-General to be responsible for the conduct of the officials of the Organization and for ensuring that their treatment of domestic workers in their employ evidences respect for all applicable United States laws. In this regard, it is recommended that the appropriate United Nations office maintain copies of the signed domestic worker contracts and be able to review such contracts, as well as records of payments made to each domestic worker, in the event that the United States Mission seeks assistance if faced with credible allegations of a United Nations official's mistreatment of a domestic worker. The United States Mission and/or the Department of State refer credible allegations of abuse of domestic workers by United Nations officials which may constitute criminal conduct to the United States Department of Justice. In that context, the United States Mission and the Department of State may take other appropriate action, including, based on the determination by an appropriate prosecuting authority that prosecution is warranted, a request for a waiver of any applicable immunity. United Nations officials are not only expected to pay the minimum or prevailing wage and abide by other contract terms, but they should also be aware that in the United States, withholding a person's passport may be evidence of the crime of trafficking in persons if it is done with the intent of keeping that person in a state of forced labour or service.

The recently passed William Wilberforce Trafficking Victim's Protection Reauthorization Act requires the Secretary of State to "suspend for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or international organization, if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more non-immigrants holding an A-3 or G-5 visa, and that the diplomatic mission or international organization tolerated such actions".

Documentation requirements upon arrival and departure

The United Nations Secretariat is reminded that, if a domestic worker is issued a visa and admitted to the United States, the United Nations is required to submit the following documents to the United States Mission upon the worker's entry into the United States: the original passport, containing the most recent original I-94 "Departure Record", and a copy of the signed contract between the employer and the domestic worker in English. This official registration must be accomplished within 90 days of the date of the original pre-notification request.

The United States Mission wishes to remind the United Nations Secretariat that it is the responsibility of employers of personal domestic workers to retransfer abroad all workers upon the workers' leaving their employ or upon the transfer of the employer. This responsibility remains applicable notwithstanding the circumstances surrounding the termination of the employment. The United States Mission, however, will not object to the domestic worker's changing employers provided that the new employer is in a legal status to offer such employment, offers fair and reasonable employment conditions, and will assume the responsibility to retransfer the domestic worker abroad at the conclusion of the employment. The United States Mission also wishes to remind the Secretariat that all domestic employees must be notified to the United States Mission upon their arrival in the United States, and upon their departure or transfer to a new employer.

The United States Government places a strong emphasis on its commitment to combat abuse and trafficking in persons in all forms and underscores that it takes seriously any allegations of mistreatment of domestic workers by their diplomatic employer.

The United States Mission to the United Nations avails itself of this opportunity to renew to the United Nations Secretariat the assurances of its highest consideration.

UNITED STATES MISSION TO THE UNITED NATIONS
PRE-NOTIFICATION OF A DOMESTIC WORKER
(G-5 Visa Applicants)

From: United Nations Visa Committee

Approving Official: The Assistant Secretary-General for Human Resources Management: _____

Full Name of Applicant:

Surname: _____, Given (First): _____

Middle: _____

Sex:
Male ☐ Female ☐

Current Citizenship: _____ **Date of Birth** (mm-dd-yyyy): ____/____/_____

Citizenship at Birth: _____ **Place of Birth** (City, Country): _____

Type of Passport:

Official ☐ Service ☐ Regular ☐ Other (type) ☐ _____

Passport Number: _____

Job Title: _____

Description of Duties: _____
_____
_____

Employer's Name: _____

Employer's P.I.D. Number*, Title/Organization, and Grade: _____,
_____, and _____
*If employer has not yet arrived in country, please provide employer's passport number: _____
_____

Duty Address/Residence (address where duties will be performed by domestic worker):
(Address) _____
(Telephone Number) _____

Please email completed form to ***UNDomesticWorkers@state.gov***